IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 6828 of 2004
With
SPECIAL CIVIL APPLICATION No. 8067 of 2004
With
SPECIAL CIVIL APPLICATION No. 7649 of 2004
To
SPECIAL CIVIL APPLICATION No. 7816 of 2004
With
SPECIAL CIVIL APPLICATION No. 15208 of 2005
To
SPECIAL CIVIL APPLICATION No. 15327 of 2005
With
SPECIAL CIVIL APPLICATION No. 15329 of 2005
To
SPECIAL CIVIL APPLICATION No. 15340 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

THAKORE VITHALJI BABUJI & 122 - Petitioner(s)

Versus

EXECUTIVE ENGINEER & 12 - Respondent(s)

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Appearance :

MR PRAKASH K JANI for Petitioner(s) : 1 – 25.

MR KAMAL TRIVEDI, ADDL.ADVOCATE GENERAL

WITH

MS SANGITA VISHEN AGP for Respondent(s) : 1 - 13.

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 10/08/2005

CAV JUDGMENT

1.As common question of law and facts arise in this group of petitions and Special Civil Application No.6828 of 2004 and 137 other allied petitions / matters filed by the workmen are as such cross-petitions challenging the very judgment and Award passed by the Labour Court impugned in Special Civil Application No.7649 to 7816 of 2004 and therefore, all these petitions are heard together and disposed of by this common judgment.

2.Special Civil Application No.7649 to 7816 of 2004 are filed by the State of Gujarat (hereinafter referred to as “the Management” for convenience), being aggrieved and dissatisfied with the finding and reasoning recorded by the Labour Court in the Judgment and Award dtd.23/1/2004 in Reference (LCK) Nos.246 to 300 of 2003 and Reference (LCK) Nos.301 to 413 of 2003 with regard to Section 26(F), 25(G) and 25(H) of the Industrial Disputes Act, 1947 (hereinafter referred to as “the ID Act” for convenience).

3.Special Civil Application Nos.6828 of 2004 with 8067 of 2004 with Special Civil Application Nos.15208 to 15327 of 2005 with Special Civil Application Nos.15329 to 15340 of 2005 are filed by 132 workmen in number challenging the Judgment and Award passed by the Labour Court, Kalol dtd.23/1/2004 in Reference (LCK) Nos.246 to 300 of 2003 and Reference (LCK) Nos.301 to

413 of 2003 in not passing order with regard to reinstatement and back wages.

4.Heard Shri Kamal B. Trivedi, learned Additional Advocate General with Ms.Sangita Bisan, learned Assistant Government Pleader on behalf of the Management. Shri P.K. Jani, learned advocate appearing on behalf of 132 concerned workman, out of 168 petitions filed filed by the management and so far as the rest of the workmen are concerned, though served nobody appears.

5.It is the case of the Management that for the irrigation network of Dharoi Dam, the concerned workmen were engaged as a daily wager purely on temporary basis and they were to discharge their duties entrusted to them as and when require. It is also the case of the Management that all of them were engaged as such as and when irrigation work was available with the

department and availability of work to engage them daily wagers had always been depending upon the availability of the water in the Dam for the purpose of irrigation and thus for all practical purposes, the nature for activities for each of the concerned workmen were engaged can be described to be seasonal wherein the concerned workmen were coming to the work on their own. It was the case of the concerned workmen that they were working as Daily Wagers since many years and their services came to be terminated without payment of retrenchment compensation and without following any procedure as required under secs.25(F), 25(G) and 25(H) of the ID Act and all of them had worked continuously as required under sec.25(B)(1) of the ID Act and therefore, all of them raised Industrial Disputes which were referred to the Labour Court, Kalol for their adjudication being Reference (LCK) Nos.246 to 300 of 2003 and Reference (LCK) Nos.301 to 413

of 2003. During the course of the hearing of the aforesaid References, the Management produced a Statement of days on which each of the concerned workmen had worked right from 1988 till 1999 to show that none of the workmen had worked in 1999 and therefore, there was no question of termination on 15/3/1999, as alleged by the concerned workmen, as in fact, none of the workmen were on duty either on 14/3/1999 or on 15/3/1999. However, considering the fact that most of the workmen were working for more than five years, the Labour Court recorded a finding and held that all the concerned workmen had worked continuously as contemplated under Sec.25(B)(1) of the ID Act and therefore, as no retrenchment compensation was paid before terminating the services of the concerned workmen, there is breach of Sec.25(F) of the I.D. Act. Considering the fact that subsequently the work of distribution of the water to the farmers was given to other

Cooperative Societies (Piyat Mandalies formed by the farmers themselves), which was being done by the concerned workmen earlier, the Labour Court recorded a finding and held that there is breach of Sec.25(G) and 25(H) of the I.D. Act also. However, holding that each concerned workman were offered the work as and when the work was available and that the work was available when there is water for distribution for irrigation, the Labour Court did not pass any order with regard to reinstatement. However, directed the Management – State of Gujarat to prepare a Seniority List of all the daily wagers and as and when the work is available and there is irrigation season, to offer work as per the seniority list. Being aggrieved by and dissatisfied with the finding recorded by the Labour Court in the impugned Judgment and Award with regard to breach of Sec.25(F), 25(G) and 25(H) and that the concerned workman have worked continuously

as contemplated under sec.25(B)(1) of the I.D. Act, the Management – State of Gujarat has assailed the Judgment and Award passed by the Labour Court.

6.Shri K.B. Trivedi, learned Additional Advocate General has submitted that except the above findings, the State Government is not aggrieved by the directions issued by the Labour Court in the impugned Judgment and Award i.e., with regard to preparation of Seniority List and offering work as and when the work is available as per the Seniority List etc.

7.On the other hand, the concerned workmen have also assailed the very Judgment and Award passed by the Labour Court in not passing order of reinstatement inspite of recording a finding that the concerned workmen have worked continuously as contemplated under sec.25(B)(1) of the I.D. Act and that there is breach of

Sec.25(F), 25(G) and 25 (H) and not passing any order with regard to back wages.

8.Shri K.B. Trivedi, learned Additional Advocate General has submitted that all the concerned workmen were engaged as Daily Wagers purely on temporary basis in the network of Dharoi Dam and as and when the irrigation work was available with the department, they were engaged. The availability of the work to engage them as Daily Wager had always been depending upon the availability of the water in the Dam for the purpose of irrigation. And thus, for all practical purposes, the nature of the activities for which each concerned workmen were engaged, was seasonal. It is further submitted by him that the concerned workmen were coming on their own and stopping to come for work on their own and the phenomena of recession of work which used to occur in this case with the concerned workmen, cannot be

attributed to the Management – State of Gujarat. It is further submitted that in fact, the Labour Court in the impugned judgments and Awards had specifically recorded finding while considering the question of reinstatement and back wages that all the concerned workmen were serving as Daily Wagers and as and when there was a need and the requirement, the concerned workmen were offered work. It is also further held that the nature of the work offered to the concerned workmen was depending upon the irrigation and availability of the water and the work which was being done by the concerned workman was distributing water from Canal to the farmers and water was distributed for irrigation only when the water is available upon to certain level in the Dam. Mr.Trivedi has also further submitted that merely because of some of the concerned workmen had worked for 5 years or more for some days with break the Labour Court has come to the conclusion that

the concerned workman had continuously worked as contemplated under sec.25(B)(1) of the I.D. Act and therefore, though the concerned workmen had not worked for 240 days in the last preceding year, counting from 15/3/1999 then also, the Labour Court has held that there will be breach of sec.25(F) of the I.D. Act. Mr.Trivedi, has further submitted that such a finding is not only erroneous but misinterpreting sec.25(B)(1) of the I.D. Act. Mr.Trivedi, has drawn the attention of this Court to the statement of the days for which the concerned workman had worked and has submitted that none of the 168 workmen has ever worked for 240 days in the preceding year with reference to their alleged termination i.e. 15/3/1999. It is also further submitted that as many as 93 workmen out of 168 were in fact admittedly never there in the year 1999 and therefore, even otherwise, their arise no question of their alleged termination on

15/3/1999. It is also further submitted on the basis of said statement that as may as 134 workmen out of said 168 had never put in 240 days of work at any point of time right from the beginning their initial engagement till 1999. It is also further submitted that as many as 35 workmen out of said 168 have have never worked in last 5 years. It is, therefore, submitted that as none of the workmen had worked for 240 days in the preceding year with reference to their alleged date of termination i.e. 15/3/1999,there is no question of violation of Sec.25(F) of the I.D.Act more particularly as stated hereinabove, the workmen were coming on their own and stopping to come for work on their own, considering the availability of work and the water being available for distribution for irrigation and as such there is no retrenchment at all by the Management – State of Gujarat.

It is further submitted by Mr.Trivedi that as stated hereinabove, in fact, none of the workman was working on 15/3/1999 and/or 14/3/1999 and therefore, there was no question of any retrenchment by the Management -State of Gujarat as alleged on 15/3/1999. Therefore, it is submitted that when there was no retrenchment at all as alleged on 15/3/1999, there was no question of breach of sec.25(F) of the I.D. Act.

9.Mr.Trivedi has further submitted that as stated hereinabove, none of the workman has completed and/or worked for 240 days in the preceding year with reference to their alleged date of termination i.e. 15/3/1999 and therefore, there is no question of breach of sec.25(F) of the I.D.Act. Mr.Trivedi, has further submitted that none of the daily wager can be said to have put in one year continuous service within the meaning of sec.25(B) of the I.D. Act in view of

the fact that they were coming for work on their own and when season used to start on the availability of the water for irrigation in the Dharoi Dam and they used to stop coming for work on their own on completion of the irrigation work. He has further submitted that the interpretation occurred because of cession cannot be described as part of uninterrupted service as per sec.25(B)(1) of the I.D.Act. He has further submitted that the expression of recession of work occurring in sec.25(B)(1) takes it colour for its meaning from the earlier expression used in the said sections i.e. (a) sickness (b) unauthorized leave (c) an accident (d) strike which is illegal and lock out. It is submitted that in the present case intermittent cession of work was directly attributed to the factum of the said daily wagers having stopped to come to work on their own on various occasions and the same was not within the control of the employer. It is

further submitted that none of the daily wager can be said to have completed 1 year of the continuous service within the meaning of sec.25(B)(2) of the I.D. Act, inasmuch as none of them have put in 240 days during the period of 12 calender months preceding the alleged date of termination dtd.15/3/1999. So far as the finding given by the Labour Court with regard to sec.25(G) of the I.D. Act is concerned, it is submitted by Mr.Trivedi that there is no breach of said provisions since after 15/3/1999, no junior workman was retained and after 15/3/1999, initially a contract system and thereafter Piyat Mandalies of farmers' themselves have been looking after the irrigation work as and when required and therefore, the finding of the Labour Court with regard to the breach of sec.25(G) of the I.D. Act is erroneous and requires to be quashed and set aside.

The sum and substance of the arguments advanced and submissions made on behalf of the Management – State of Gujarat is as under;

(1)There is no retrenchment by the Management – State of Gujarat as alleged on 15/3/1999 at all.

(2)There is no evidence that the concerned workmen were not offered work due to cession of work.

(3)None of the workmen had completed more than 240 days in the preceding year with reference to their alleged date of termination i.e. 15/3/1999.

(4)There is no evidence that there is any retrenchment as alleged on 1/3/1999 and/or that any of the workmen were on duty and/or working on 15/3/1999. There is no retrenchment as contemplated under sec.2(o)(o) of the I.D. Act. Merely because some of the workmen had worked for some years for some days as a Daily wagers, and not completed 240 days in the preceding

year with reference to their alleged date of termination i.e. 15/3/1999, it cannot be said that the workmen had continuously worked as contemplated under sec.25(B) (1) of the I.D. Act.

(5)The action of termination is missing as there was no work. They themselves have stopped coming.

(6)The availability of the work for irrigation in Dharoi Dam was depending upon the availability of water that too up to a certain level in the Dam and the concerned workmen were performing the duty of distributing water to the farmers for irrigation. Therefore, the work was seasonal work. None of the daily wagers can to be said to have completed 1 year service within the meaning of sec.25(B)(2) inasmuch as none of them have put in 240 days service in 12 calender month preceding the date of alleged termination.

(7)The provisions of sec.25(B)(1) and 25(B)(2) is

as such is in aid to Sec.25(B)(1) and clarificatory in nature inasmuch as for considering sec.25(F) it is to be proved that the concerned workmen ought to have worked continuously in the last preceding year inclusive of service which may be interrupted on account of eventuality such as sickness etc. as mentioned in sec.25(B)(1) and what is meant by sec.25(B)(2) is that if in the entire preceding year the workman has worked for 240 days in all, but not continuously, it should be deemed to be a continuous service within the meaning of sec.25(B)(1) of the I.D. Act. Therefore, even for considering sec.25(B)(1), completion of 240 days in the preceding year is must.

(8)After 1999, earlier system of irrigation work where the daily wagers were working, is dispensed with and no juniors to the concerned workmen are retained as such in the same cadre of daily wager in service and now after 1999

the farmers themselves by forming Piyat Mandali carry out the said work and many of the concerned workmen are already engaged by the said Piyat Mandalies.

10.Mr.K.B. Trivedi, learned Additional Advocate General has relied upon the following decisions in support to his above submissions;-

(i)Delhi Cloth & General Mills Company Limited Vs. Its workmen and Ors., reported in AIR 1967 SC 469.

(ii)Jaipur Udyog Limited Vs. CWK Sangh, reported in 1972 SC 1352.

(iii)Judgment of the Division Bench of this Court in the case of Executive Engineer (Mechanical) Vs. Chetan P. Oza, rendered in LPA No.899 of 1998 in SCA No.3806 of 1999.

(iv)G. Yadi Reddi Vs. the Management of Brooke Bond India Ltd., reported in 1994 LAB I.C. 186.

(v) Essen Deinki Vs. Rajive Kumar, reported in (2002) 7 SCC 400.

(vi)U.P. Drug and Pharmaceutical Company Ltd. Vs. Ramanuj Yadav, reported in (2003) 8 SCC 334.

(vii) Range Forest Officer Vs.ST Hadimani, reported in (2002) 3 SCC 25.

(viii) Manager, Reserve Bank of India, reported in (2005) 5 SCC 122.

(ix) Madhyamik Shiksha Parishad,reported in (2005) 5 SCC 122.

(x) State of Gujarat Vs. Ramesh Rathod, reported in 44(3) GLR 2590.

(xi) Workmen of Sudder Workshop of Jorehaut Tea Co.Ltd., reported in (1980) 3 SCC 406.

(xii) Union of India Vs. Uma Maheswari,reported in (1997) 11 SCC 228.

(xiii) Haryana Tourism Corporation Ltd. Vs. Fakir Chand, reported in (2003) 8 SCC 248.

(xiv) Amreli Municipality Vs. GPME Union, reported in (2004) 2 GLH 692 (FB).

(xv) Koodaranji Service Co.Op.Bank Vs. M.M. Lissy, reported in 1994 (II) LLJ 97.

(xvi) State of Haryana Vs. Om Prakash, reported

in (1998) 8 SCC 733.

(xvii) Himanshu Kumar Vs. State of Bihar, reported in 1998(II) LLJ 15 SC.

11.1.Relying upon the judgment and order passed by the Division Bench of this Court, in the case of the Executive Engineer (Mechanical) (Supra) rendered in LPA No.899 of 1998, it is submitted that while considering the term “continuous service”, if the workman has not worked for 240 days in last preceding year, he holds no right for reinstatement. In another words, if the workman has not completed 240 days in the last preceding year with reference to their alleged date of termination, benefits of the provisions of sec.25(F), 25(G) and 25(H) of the I.D. Act are not available to him.

11.2.Replying upon the judgment of A.P. High Court, in the case of G.Yadi Reddi (Supra), it is submitted that the expression “cession of

work" occurring in sec.25(B)(1) takes its colour for its meaning from earlier expression used in the section viz. [i] sickness, [ii] unauthorized leave [iii] an accident [iv] strike which is illegal and [v] lock out. And in the present case the intermittent cessation of work was directly attributable to the factum of the said daily wagers having stopped to come to work on their own on various occasions and the same was not within the control of the employer.

11.3.Relying upon the judgment of the Hon'ble Supreme Court in the case of Essan Deinki (Supra), it is submitted that for proving the contention with respect of 240 days as contemplated under sec.25(B), burden of proof lies on him.

11.4.Relying upon the judgment of the Hon'ble Supreme Court in the case of U.P. Drugs and

Pharmaceuticals Co.Ltd. (Supra) more particularly para 6 to 10 of the said judgment, Mr.Trivedi has submitted that for getting benefit of Sec.25(B) of the I.D. Act it must be shown that the workman was employed for a period of not less than 12 calender months and during those 12 calender months he has worked for not less than 240 days.

11.5.Relying upon the judgment of the Hon'ble Supreme Court in the case of Range Forest Officer(Supra), it is submitted that it is for the claimant to lead evidence to show that he had in fact worked for 240 days in the year preceding his termination and filing of an affidavit is only his own-statement in his favour and that cannot be recorded as sufficient evidence or thing or direction to come to the conclusion that the workman had in fact worked for 240 days in a year.

11.6.Relying upon the judgment of the Hon'ble Supreme Court in the case of the Manager, Reserve Bank of India (Supra) more particularly para 19, 30 to 32, it is submitted by Mr.Trivedi that as held by the Hon'ble Supreme Court the workman has to prove by documentary evidence that he has worked continuously for 240 days in a preceding year of his alleged termination.

11.7.Mr.Trivedi relying upon the judgment of the Hon'ble Supreme Court in the case of Madhyamik Shiksha Parishad (Supra) more particularly para 5 of the said judgment, has submitted that as held by the Hon'ble Supreme Court completion of 240 days does not under the Industrial Dispute Act import the right of regularization.

11.8.Relying upon the judgment of the Division Bench of this Court in the case of State of Gujarat Vs. Ramesh Bhopabhai Rathod (Supra), it

is submitted by Mr.Trivedi that unless the retrenchment is proved, there would not arise any question of violation of statutory provisions of sec.25(F) and for that purpose, the provisions of sec.25(G) as well as 25(H).

11.9.Relying upon the judgment and the order of the Hon'ble Supreme Court in the case of Workmen of Sudder Workshop of Jorehaut Tea Co.Ltd. (Supra), it is submitted that the departure from sec.25(G) on justifiable ground is always permissible.

11.10.Relying upon the judgment of the Hon'ble Supreme Court in the case of Union of India Vs. Uma Maheshvari (Supra), and Hariyana Tourism Corporation (Supra), Mr.Trivedi has submitted that considering the nature of work performed by the concerned workmen and now the earlier work of irrigation Network which the daily wagers were working, is totally dispensed with

and nobody like the concerned workman has been retained as such in the same cedar of daily wager in service and now the farmers themselves by forming Piyat Mandali presently carry out the said work, it is requested that no relief in favour of the concerned workmen is required to be granted.

11.11.Relying upon the judgment of the Full Bench of this Court in the case of Amreli Municipality (Supra) it is submitted by Mr.Trivedi that when initial appointment of the concerned workmen were de-hors the rules and/or by not following regular procedure for selection, the concerned workmen are not entitled to any regularization.

11.12.Relying upon the judgment of the Hon'ble Supreme Court in the case of Himanshu Kumar (Supra), it is submitted that as held by the Hon'ble Supreme Court in the aforesaid

decision, when the appointments are regulated by statutory Rules, the concept of “industry” to that effect stands excluded and disengagement from service of temporary employees on daily wages cannot be construed as retrenchment. Mr.Trivedi, learned Additional Advocate General has, therefore, requested to quash and set aside the finding and the reasoning recorded by the Labour Court with regard to Sec.25(B), 25(F), 25(G) and 25(H) of the I.D.Act and allow the present petitions filed by the Management – State of Gujarat accordingly.

12.Per-contra, Mr.P.K. Jani, learned advocate appearing on behalf of the workmen has submitted that most of the workmen are working since many years and as many as 25 workmen out of 168 have completed 240 days in different years and that there was continuous work for doing irrigation work and therefore, it is

rightly held by the Labour Court that the concerned workmen have continuously worked as required under sec.25(B)(1) of the I.D.Act and therefore, there is breach of Sec.25(F) of the I.D. Act, as before terminating the services of the concerned workmen, no retrenchment compensation and/or notice pay was paid. It is also further submitted by him that there is no requirement that the workmen ought to have completed 240 days in the last preceding year of their alleged termination and for considering sec.25(B), read with Sec.25(F) of the I.D. Act, it is sufficient that in any of the year in past the workmen had worked for not less than 240 days. He has relied upon the judgment of the Learned Single Judge of this Court in the case of Moti Ciramic Industries Vs. Jivuben Rupabhai and ors. reported in 2000(2) GLR 1558 and has submitted that if the employer fails to provide work to the workmen during the particular period that would be

cession of work “not due to any fault of the workmen” and the case would be governed by sec.25(B)(1) of the I.D. Act and in such cases, the requirement of working for 240 days mentioned in section 25(B)(2) would not apply and the ground that the workman had not worked for 240 days during some years in his long service career would not make sec.25(F) inapplicable. Mr.Jani, has also relied upon the judgment of the learned Single Judge of this Court in the case of Sunil Bhalchandra Jani Vs. GEB, reported in 2002(3) GLH 523 in support of his submission that if the workman satisfies requirement of sec.25(B)(1), then there is no need for completion of 240 days for getting benefits of sec.25(F)of the ID Act. Relying upon the said judgment,it is submitted that as held by the learned Single Judge of this Court, if the workmen had completed actual work of 240 days during the tenure of his employment with the Board, the provisions of sec.25(F) would be

applicable. It is, therefore, submitted that even if the workmen had worked for not less than 240 days in any of the year earlier (though not worked for less than 240 days in the preceding year of alleged termination) in that case also the employer has to comply with the provisions of sec.25(F) of the I.D.Act and not following the same would be in violation of sec.25(F) of the I.D.Act and the reinstatement is must. He has submitted that the Industrial Dispute Act being a benevolent Act, the interpretation should be in the interest of the workmen.

13.Meeting with the submissions and contentions on behalf of the State Government with regard to dispensing with the earlier system of irrigation work when the daily wagers were working and now the farmers themselves by forming Piyat Mandalies presently carry out the said work, Shri Jani has submitted that

providing irrigation facility is State primary function of the State Government and the same could not have been given by the State Government on contract. Therefore, it is submitted that it is rightly held by the Labour Court that there is breach of sec.25(F) of the I.D. Act. He has also further submitted that as such, the set-up for distributing water etc. from Dharoi Dam was since 1977 and therefore, it is to be presumed that the work was permanent in nature and not seasonal as contended by the learned Additional Advocate General and therefore, it is requested to allow the petitions filed by the concerned workmen and to dismiss the petitions filed by the Management – State of Gujarat. It is also further submitted that when there is specific finding given by the Labour Court that there is breach of Sections 25(F) and 25(H) of the I.D.Act, the Labour Court ought to have granted reinstatement and that too with back wages.

Therefore, it is requested to allow the petitions filed by the workmen.

14.In rejoinder, Mr.K.B. Trivedi, learned Addl.Advocate General has submitted that in view of the subsequent judgment of the Division Bench of this Court in the case of the Executive Engineer (Mechanical) (Supra), two judgments rendered by the learned Single Judge of this Court relied upon by the learned advocate appearing on behalf of the respondent workmen are not required to be considered as a good law. Even otherwise it is submitted that the facts of both the judgments on which heavy reliance has been placed, are quite different and one has to consider the judgment in the facts of those cases.

15.It is submitted that so far as the decision in the case of Sunil Bhalchandra Jani (Supra) is concerned, learned Single Judge of this Court

has considered sec.25(B) of the Industrial Disputes Act where, it was found that the workmen had remained in continuous service with the employer and his services came to be interrupted by reason provided in that section and he was not continuously serving but he had rendered actual work of 240 days and in that circumstances, the learned Single Judge has held that the service has to be considered continuously and therefore,it is submitted that the observations made by the learned Single Judge in that judgment is required to be considered in the context of facts of that case and therefore, it is submitted that the said judgment is not in any way helpful to the workmen.

16.Before considering the rival contentions and submissions, the following undisputed facts which emerge from the record and the Judgment and Award passed by the Labour Court are

required to be considered;-

[i] There are in all 168 daily wagers – workmen out of them only 2 to 3 workmen are examined.

[ii] None of the 168 workmen has ever worked for 240 days in the preceding year with reference to their alleged date of termination i.e. 15/3/1999.

[iii] Out of 168 workmen, 93 workmen were in fact never in the employment in the year 1999.

[iv] Out of 168 workmen, 134 workmen had never put in 240 days of work at any point of time right from beginning till 1999.

[v] Out of 168 workmen, 35 workmen have never worked in last 5 years even for a single day.

17.The following observations and findings of the Labour Court are required to be considered and taken note of before deciding and considering the rival submissions and contentions of the parties;-

[I] All the workmen were serving as Daily

Wagers and they were offered / given work at the time when the water was available by way of rain in the Dharoi Dam for the purpose of distributing water through Canals and as and when their services were needed, they were offered the work (though it is held that it cannot be said that the workmen were given work only in season).

18.Now considering the aforesaid facts, the submissions and contentions on behalf of both the parties are required to be considered.

18.1. The Labour Court has mainly relied upon the judgment of the learned Single Judge of this Court in the case of Moti Ciramic Industries (Supra) and Sunil Bhaychand Jani (Supra) for holding that the workmen have continuously worked as required under sec.25(B)(1) of the I.D. Act and for breach of Sec.25(F) of the I.D.Act it is not required to complete

240 days in the last preceding year of their alleged termination.

18.2The first contention on behalf of the Management – State of Gujarat is that there is no retrenchment at all on 15/3/1999 as alleged, as contemplated under sec.2(O)(O) of the I.D.Act and when there is no retrenchment under sec.2(O)(O) of the I.D.Act, there is no question of applicability of sec.25(F) of the Act and for that purpose, he has relied upon the Judgment' of the Division Bench of this Court in the case of State of Gujarat Vs. Rameshbhai Mafabhai Rathod (Supra). Considering the evidence on record and the statement of Working Days submitted by the Management – State of Gujarat, which is reproduced in the impugned Judgment and Award passed by the Labour Court, out of 168 workmen, 93 workmen were not in employment at all in the year 1999 and so far as the rest of the workmen are

concerned, they have not been able to prove that were in fact working on 14/3/1999 and/or 15/3/1999. Under the circumstances, when the workmen were not on duty, there was no question of retrenchment as alleged w.e.f. 15/3/1999.None of the workmen had in fact proved that there was any retrenchment on and from 15/3/1999 as contemplated under sec.2(O)(O) of the I.D. Act. Therefore the finding of the Labour Court with regard to retrenchment on and from 15/3/1999 is without any evidence. Sec.25(F) of th I.D. Act reads as follows;-

"Sec.25(F). Conditions precedent to retrenchment of workmen.-- No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until--

(a) the workman has been given one month's notice in writing indicating the reasons for

retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice;

(b) the workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days' average pay [for every completed one year of continuous service] or any part thereof in excess of six months; and

(c) notice in the prescribed manner is served on the appropriate government [or such authority as may be specified by the appropriate Government by notification in the Official Gazette].”

18.3 Therefore, when it is not proved and/or established that there is any retrenchment, there not question is no question of applicability of secs.25(F) and 25(H) of the I.D. Act.

18.4 The next contention raised on behalf of the State is whether for getting benefit under Sec.25(F) of the Act a workman is required to show that he has, in fact, worked for 240 days in the last preceding year from the date of alleged termination or not. Mr.Trivedi, learned Additional Advocate General has heavily relied upon the recent decision of the Division Bench of this Court in the case of the Executive Engineer (Mechanical) (Supra), rendered in the Letters Patent Appeal No.899 of 1998, by which considering the judgment of the Hon'ble Supreme Court in the case of Mohan Lal Vs. Bharat Electronics Ltd. reported in 1981 (3) SCC 225 and another decision of the Hon'ble Supreme Court in the case of U.P. Drugs and Pharmaceuticals Co.Ltd. Vs. Ramanuj Yadav & Ors., reported in 2004 SCC (L&S) 46 and considering sec.25(B) and 25(F) of the ID Act, the Division Bench of this Court in para 9 has held as under;-

"9. It is also to be seen from the said judgment of the Supreme Court that referring to Mohan Lal's case, Their Lordships clearly observed that in the matter of Mohan Lal, the Supreme Court, on an earlier occasion, had observed that Clause-2(a) of Section-25(B) provides for a fiction to treat a workman in continuous service for a period of one year despite the fact that he has not rendered uninterrupted service for a period of one year but he has rendered service for a period of 240 days during the period of twelve calender months counting back ward and just preceding the relevant date i.e. The date of retrenchment. When the Supreme Court says that the employer has to prove that he had worked for 240 days, during the period of 12 calender months counting backward and just preceding the relevant date, then, there is no scope to hold that the words, just preceding, are otise or superfluous or have no

importance. A judgment is a judgment for what it decides. A judgment cannot be applied without appreciating the legal provisions involved and the factual situation simply on the ground that it takes a different view from the earlier view. It must be shown to the Court that very same provisions of law have been differently interpreted by the Supreme court or by the Larger Bench of the High Court or there is a conflict of views in judgment of Coordinate Bench. In the matter of U.P. Drugs & Pharmaceuticals Co.Ltd. (supra),the Supreme Court, while referring to Section-2(g) and 6(n) of the U.P. Act, has clearly observed that in view of the language employed in Section-2(g) an intention cannot be attributed to the U.P. Act that if the workman has not worked for 240 days in just preceding year, he holds no right. The Supreme Court did not interpret the Mohan Lal's case nor had over-ruled the said authority, but, has distinguished the same on the facts and the different

provisions of law. The judgment in the matter of Mohan Lal (supra) still holds good. undisputedly, the respondent has not completed 240 days in just preceding twelve calender months, he would not be entitled to any benefits under Section-25(F) read with Section-25(B) of the I.D. Act.”

18.5 Now, therefore, considering the judgment of the Division Bench of this Court which is binding to this Court as a Single Judge, it is held that if the workmen has not worked for 240 days in just preceding year, it cannot be said that he was in continuous service for getting benefit under sec.25(F) of the I.D. Act. Now, considering the facts on hand, as stated hereinabove, admittedly none of the workmen has worked for 240 days in the preceding year with reference to the alleged date of termination i.e. 15/3/1999. Not only that as stated hereinabove, as many as 134 workmen out of 168 had never put in 240 days of work at any point of time right

from beginning till 1999. Under the circumstances and considering the judgement of the Division Bench of this Court which is after considering the law laid down by the Hon'ble Supreme Court, it cannot be said that the concerned workmen have worked continuously so as to attract provisions of Sec.25(F) of the Act.

18.6 So far as the decision relied upon by the learned advocate appearing on behalf of the workmen in the case of Moti Ciramic and Sunil Jani(Supra) are concerned, the facts were somewhat different and one has to consider the judgment and the observations made by the Court in those judgments,considering the facts and the controversy in question. So far as the decision in the case of Sunil Jani is concerned, it was the case where the concerned workmen had in fact worked for 240 days continuously in the last preceding year from the date of termination and the learned Single Judge was also considering the

case whether the workmen has worked for the days including which may be interrupted on account of the contingencies mentioned in sec.25(B)(1) of the I.D.Act. In that back ground, it is held that the workmen satisfy the provisions of sec.25(F) of the ID Act and it is further held and observed that the very fact that the workman has not worked for 240 days in service in some years during his employment would not debare him from claiming the entire amount of retrenchment as provided under sec.25(F) of the ID Act. Therefore, the contention on behalf of the respondent workmen that the workman is not required to give proof that he has worked for 240 days in the preceding year of his termination is not correct reading of the judgment of the learned Single Judge of this Court. One has to consider and read the judgment in the facts of the case and merely because some observations are made, it cannot have a binding effect.

18.7 So far as the decision reported in the case of Moti Ciramic Industries (Supra) is concerned, in the said case also, the learned Single Judge was considering the question of uninterrupted service and not including the service which may be interrupted on account of the sickness etc. as envisaged under sec.25(B)(1) and in that context, the learned Single Judge has made the observations. On going through the entire judgment, it cannot be said that even if the workmen has not worked for not less than 240 days including the days due to interrupted service including the service which is mentioned in sec.25(B)(1), he can still get the benefits of sec.25(F) of the I.D. Act. Even otherwise assuming that there are some observations made by the learned Single Judge in that case, which goes to suggest that the concerned workman is not required to establish that he has worked for not less than 240 days in the last preceding year, in that case also in view of the decision of the

Division Bench in the case of Executive Engineer (Mechanical) Supra which is bending upon me, it is held that as none of the workmen have completed and/or worked for not less than 240 days in the preceding year commencing from 15/3/1999 the date of alleged termination, there is no breach of Sec.25(F) of the ID Act. Apart from the above fact, as stated hereinabove, as such in the present case, the workmen have failed to prove that there was any retrenchment as alleged on and from 15/3/1999.

The contention on behalf of the respondent workmen that for getting benefit under sec.25(F) of the ID Act it is sufficient if it is proved by the workman that the workman has worked for not less than 240 days in any year other than the preceding year from the date of termination, cannot be accepted.

18.8 The Hon'ble Supreme Court in the

case of Ramkrishna Ramnath Vs. Labour Court, reported in 1997 (II) LLJ 307 has observed as under;

“Under S.25B a workman who during the period of 12 calender months has actually worked in an industry for not less than 240 days, is deemed to have completed on year's service in the industry. Consequently, an enquiry has to be made to find out whether the workman has actually worked for not less than 240 days during a period of 12 calender months immediately preceding he retrenchment.”

18.9 The Hon'ble Supreme Court in the case of Mohan Lal Vs. Management of Bharat Electronics Limited, reported in 1981 LAB I.C. 806 has observed as under;-

“Sub-section(2) provides for a fiction to treat a workman in continuous service for a

period of one year despite the fact that he has not rendered uninterrupted service for a period of one year but he has rendered service for a period of 240 days during the period of 12 calender months counting backwards and just preceding the relevant date being the date of retrenchment. In other words, in order to invoke the fiction enacted in sub-section(2)(a), it is necessary to determine first the relevant date, i.e. The date of termination of service which is complained of as “retrenchment”. After that date is ascertained, move backward to a period of 12 months just preceding the date of retrenchment and then ascertain whether within the period of 12 months, the workman has rendered service for a period of 240 days. If these three facts are affirmatively answered in favour of the workman, pursuant to the deeming fiction enacted in sub-section 2(a), it will have to be assumed that the workman is in continuous service for a period of one year, and he will satisfy the eligibility

qualification enacted in Sec25F”.

18.10 In view of the aforesaid decision of the Hon'ble Supreme Court as well as the judgment of the Hon'ble Supreme Court in the case of Mohanlal (Supra) and the decision of the Division Bench of this Court in the case of Executive Engineer (Mechanical) (Supra), the submissions made on behalf of the respondent workmen cannot be accepted. For getting benefit flowing from sec.25(F) of the ID Act, a workman has to prove that he has completed 240 days' service with the establishment in 12 calender months just preceding date i.e. the date of retrenchment. And as in the present case, none of the 168 workmen has ever worked for 240 days in preceding year with reference to their alleged date of termination i.e. 15/3/1999 and more particularly out of the aforesaid 168 workmen, 134 workmen had never put in 240 days of working at any point of time right from the beginning till 1999.

Under the circumstances, the finding recorded by the Labur Court with reference to the continuous service under sec.25(B) of the Act are contrary to law laid down by the Hon'ble Supreme Court and the Division Bench of this Court and therefore, the same is required to be quashed and set aside.

18.11 One another reason for quashing and setting aside the finding recorded by the Labour Court with regard to the breach of Sec.25(F) of the I.D. Act, is that none of the workmen had adduced any evidence and had proved by way of evidence that they had in fact worked for 240 days in the last preceding year. As held by the Hon'ble Supreme Court in the case of Rajasthan State Ganganagar S. Mills Ltd. vs. State of Rajasthan and anr., reported in 2004 (8) SCC 161 and in the case of Essan Deinki Vs. Rajiv Kumar, reported in 2002 (8) SCC 400, onus is upon the workman to prove that he has worked for not less than 240 days in the last preceding year. The

same view is also taken by the Hon'be Supreme Court in the case of Range Forest Officer (Supra). In the present case, apart from the fact that none of the workmen had proved that they had in fact worked for not less than 240 days in the last preceding year, in fact they have admitted the particulars and the Statement of Working Days of each workman given by the State Government from which it is crystal clear that none of the workmen had completed 240 days in the last preceding year from the date of alleged date of termination i.e. 15/3/1999. Under the circumstances, the finding recorded by the Labour Court with reference to breach of secs.25(F) and 25(B) of the I.D.Act requires to be quashed and set aside.

18.12 Now coming to the finding recorded by the Labour Court with regard to breach of sec.25(G) and 25(H) of the ID Act is concerned, first of all, none of the workmen has proved on

evidence that there was any retrenchment on 15/3/1999. The finding recorded by the Labour Court with regard to breach of sec.25(G) and 25(H) is mainly considering the fact that the Management - State of Gujarat had not prepared Seniority List of the Daily Wagers and that they have not complied with the settled principle of "Last Come First Go" and that there is breach of sec.25(F) of the ID Act, as no notice pay and/or retrenchment compensation has been paid. Now, since 1999 not a single workmen has been retained, as such in the same cadre of Daily Wager in service and the earlier system of irrigation work and distribution of water has been totally dispensed with and the same is now being carried out by the farmers themselves by forming Piyat Mandali and in the Affidavit-in-reply filed by the Management – State of Gujarat to the petitions filed by the workmen, it is submitted by the Management - State of Gujarat that many of the workmen are already engaged by

the said Piyat Mandalies which is not denied by any of the workmen. None of the workman has challenged the actions of the Management – State of Gujarat of giving work to the Piyat Mandali and for which there is no reference also. Now in the facts situation of the case, the finding recorded by the Labour Court with regard to sec.25(G) and 25(H) of the Act is also not sustainable and in fact none of the workman has proved that other similarly situated workman and/or junior to them are retained. Under the circumstances, the finding given by the Labour Court with regard to breach of Secs.25(G) and 25(H) is also required to be quashed and set aside.

18.13 One another aspect which is required to be considered is that the finding recorded by the Labour Court that the work which was being done by the concerned workmen was not a seasonal. It is emerging from the record, evidence and the

finding recorded by the Labour Court that all the workmen were appointed as Daily Wagers in the Irrigation Network of Dharoi Dam and mainly they were required to do the work of distribution of water from the Dharoi Dam for the irrigation as and when the rainy water was available in the Dharoi Dam and the same was depending upon the availability of the water in the Dharoi Dam and as and when the work was available they were offered the work. In that view of the fact, the finding recorded by the Labour Court that the work was not seasonal is also required to be considered. However, in view of the fact that as held aforesaid, there is no breach of Sec.25(F), 25(G) and 25(H) of the ID Act and none of the workmen have worked for not less than 240 days in the last preceding year and therefore, this court is not considering the same in detail.

The net result of the aforesaid discussion is that the finding of the fact recorded by the

Labour Court with regard to the breach of Sec.25(F), 25(G)and 25(H) of the ID Act and that the workman had worked continuously as contemplated under sec.25(B)(1) of the Act and that there was retrenchment as alleged on 15/3/1999 are based on no evidence and contrary to the law laid down by the Hon'ble Supreme Court and the Division Bench of this Court and the same are required to be quashed and set aside.

18.14 In view of the concession given by the learned Additional Advocate General with regard to the directions issued by the Labour Court for preparation of the Seniority List etc., the said direction is not disturbed. However, as stated hereinabove, the findings with regard to breach of sec.25(F), 25(G) and 25(H) of I.D. Act are hereby quashed and set aside and in that view of the matter, the petitions filed by the concerned workmen for claiming reinstatement and back wages are required to be dismissed as in

view of the finding that none of the workman has worked for 240 days in the last preceding year from the date of alleged termination i.e. 15/3/1999 and they are not entitled to any benefit flowing from Sec.25(F) of the ID Act and there was no retrenchment at all as alleged on 15/3/1999, the workmen are not entitled for reinstatement and/or back wages.

18.15 Special Civil Applications filed by the Management – State of Gujarat are partly allowed by quashing and setting aside the finding recorded by the Labour Court with regard to breach of Sec.25(F), 25(G) and 25(H) of the ID Act and that the concerned workman has continuously worked as per Sec.25(B) of the ID Act.

18.16 For the reasons stated hereinabove, Special Civil Application Nos.7649 to 7816 of 2004 field by the Management – State of Gujarat,

are partly allowed. Rule is made absolute to the aforesaid extent in each of the petitions filed by the Management.

Consequently, Special Civil Application Nos.6828 of 2004 with 8067 of 2004 with 15208 to 15327 of 2005 with 15329 to 15340 of 2005 are dismissed. Rule is discharged in each of the petitions filed by the concerned workmen. However, there will be no order as to costs.

rafik [M.R.SHAH,J.]